



DEPARTMENT OF TRANSPORTATION

Hazardous Materials Regulations Board

[49 CFR Part 170]

[Docket No. HM-1; Notice No. 68-3]

RULES OF PROCEDURE

Filing and Processing of Petitions for Special Permits

On November 30, 1967, the Hazardous Materials Regulations Board published notice of proposed rule making No. 67-1 (32 F.R. 16437) requesting public comment on procedures proposed for use in prescribing hazardous materials regulations under title 18, United States Code, sections 831-835, and title VI and section 902(h) of the Federal Aviation Act of 1958 (49 U.S.C. 1421-1430, and 1472(h)).

As a result of the comments received, the Board is issuing this supplemental notice of proposed rule making proposing a modification of a portion of the proposed regulation—§§ 170.13 and 170.15, relating to petitions for special permits or for rule making. In addition,

on a number of requests received from the comments, the Board is announcing a decision to hold a public hearing to give all interested persons an opportunity to orally state their views on the proposed regulation, as modified by this notice. The hearing will be held at 9:30 a.m., March 19, 1968, at the Department of Transportation Building, 800 Independence Avenue SW., Washington, D.C.

The hearing will be an informal one conducted by the Board. It will not be a judicial or evidentiary type of hearing, so there will be no cross-examination of persons presenting statements. A Board

member will make an opening statement presenting, in brief, a history of the rule-making procedure as they relate to the shipment and carriage of hazardous materials. Interested persons will then have an opportunity to present their initial oral statements. Their statements should focus on the issues raised by the notice No. 67-1, as supplemented by this notice. After all initial statements have been completed, those persons who wish to make rebuttal statements will be given an opportunity to do so in the same order in which they made their initial statement. Additional procedures for the conduct of the hearing will be announced at the hearing.

Interested persons are invited to attend the hearing and present oral or written statements on the matters set herein which will be made a part of the record of the hearing. Any person who wishes to make an oral statement at the hearing should notify the Secretary of the Board by March 18, 1968, stating the amount of time required for his initial statement.

OFFICE OF THE SECRETARY OF TRANSPORTATION

WASHINGTON, D.C. 20590

All communications concerning this hearing should be addressed to the Secretary, Hazardous Materials Regulations Board, Department of Transportation, 400 Sixth Street SW., Washington, D.C. 20590. A transcript of the hearing will be made. Anyone may buy a copy of the transcript from the reporter.

Several of the comments received on notice No. 67-1 were concerned with the provisions of proposed § 170.13, prescribing procedures to be followed in obtaining special permits. Several of the comments were meritorious and were helpful to the Board in pointing out areas where clarification could be accomplished. The Board therefore proposes to revise § 170.13 and its related § 170.15 as follows:

§ 170.13 Filing of petitions for special permits for waivers or exemptions.

(a) Any person may petition the Board for a special permit for a waiver or exemption from any provision of Parts 171-190 of this chapter or Part 103 of Title 14 (14 CFR Part 103).

(b) Each petition must be submitted in duplicate to the Secretary, Hazardous Materials Regulations Board, Department of Transportation, 400 Sixth Street SW., Washington, D.C. 20590, and contain the following information:

(1) The regulatory provisions involved.

(2) The justification for the permit, including any reasons why the regulations are not appropriate, why the public interest would be served by the proposal, and the basis upon which the proposal would provide an adequate and reasonable degree of safety.

(3) A detailed description of the proposal, including when appropriate, drawings, plans, calculations, procedures, test results, previous approvals or permits, a list of specification containers, if any, to be used, a list of modified specification containers, if any, to be used, and a description of the modifications, and any other supporting information.

(4) The chemical name, common name, hazard classification, form, quantity, properties, and characteristics of the material covered by the proposal, including composition and percentage (specified by volume or weight) of each chemical, if a solution or mixture.

(5) Any relevant shipping or accident experience with the container proposed.

(6) The proposed mode of transportation, and any special transportation controls needed.

(7) The name, address, and telephone number of the petitioner, and that of the motor carrier if a tank motor vehicle is to be used.

(8) A statement or recommendation regarding any changes to the regulations which would be desirable to obviate the need for similar special permits.

(c) Unless there is good reason for priority treatment, each petition is considered in the order in which it is received. To permit timely consideration, petitions should be submitted at least 45 days before the requested effective date.

§ 170.15 Processing of petitions for rule making and special permits.

(a) General: The Board considers the information submitted by the petitioner and any other available pertinent information. Unless otherwise directed by the Board, no public hearing, argument, or other proceeding is held directly on a petition before its disposition.

(b) Grants: If the Board finds that the petitioner's proposal would provide adequate safety and is otherwise justified, the Board issues the special permit under this subpart or initiates rule-making action under Subpart C of this part.

(c) Denials: If the Board finds the petitioner's proposal would not provide adequate safety or is not otherwise justified, the Board denies the petition. The Board will inform the petitioner of the basis for the denial.

(d) The treatment of confidential or proprietary material submitted by any petitioner is governed by § 7.59 of this title.

The major changes made in the above revision include clarification of the time limits for filing requests for permits. It was not the original intent of the Board to provide that a permit would not be considered unless it was filed at least 60 days before the proposed effective date. The Board's intent was to set forth a time sequence for the orderly and assured consideration of each request, for the protection and equal treatment of all petitioners. Obviously, a petitioner who files far enough ahead of time for adequate consideration should be accorded priority of consideration over another petitioner who, without good reasons, files at a later date. For these reasons, this provision has been restated to provide that, in order to permit timely consideration, petitions should be filed 45 days before the proposed effective date, and that unless good reason for priority treatment is shown, each petition will be considered in the order received. It is emphasized that all petitions will be considered, regardless of when filed, but

assurance of timely treatment cannot be given to those filed too late for adequate consideration before the requested effective date.

Several comments were made to the requirement in § 170.13(a) that the petitioner would have to prove to the Board that the proposed alternative would provide at least an equivalent degree of safety and urged that the words "adequate degree of safety" be used instead. The Board agrees with the substance of this comment and therefore proposes to delete the requirements stated in § 170.13 (a) (1) and (2) and to limit § 170.13 (b) (2) ((3) in the November 30 notice) to an "adequate and reasonable degree of safety".

With regard to § 170.13(b), several comments expressed a concern that proof of compliance with the information submission requirements would be a prerequisite to obtaining a permit. It must be emphasized that the numbered subparagraphs in that paragraph require information to be submitted, not proof to be made. The Board considers that information on the matters listed is necessary for its informed consideration of the petition for a permit and will judge its adequacy under the circumstances of each case. Without adequate information on these points, the Board cannot make any determination as to an "adequate and reasonable" degree of safety.

Other comments suggested that § 170.13(b) (5) be limited to the submission of drawings, etc. only when appropriate; that § 170.13(b) (7) be limited to "relevant" shipping experience; and that other minor language changes be made in § 170.13(b) (4). These comments have been reflected in the substitute proposal set forth above.

Finally, several comments expressed concern over the treatment of pro-

prietary or confidential information submitted with petitions. The treatment of such information within the Department is governed by section 552 of title 5, United States Code. Specific reference to the applicable provisions governing this problem has been inserted by a cross-reference to the Department's regulation on this subject (49 CFR Part 7), which states the protection to be afforded such information.

In addition to the foregoing, the Federal Aviation Administration is considering inclusion in this part of the authority to grant deviations for carriage by air now contained in § 103.5 of the Federal Aviation Regulations (14 CFR 103.5).

In regard to water transportation, the procedures covered by this notice apply to the development of regulations (including waivers and special permits) for shippers of hazardous materials covered by Title 18 U.S.C. sections 831-835 and 49 CFR Parts 171-190. It does not apply to water transportation of bulk hazardous materials or to waiver of vessel carrier requirements which will continue to be handled by the Commandant of the U.S. Coast Guard under Title 46 U.S.C. section 170 and the regulations in 46 CFR Parts 146 and 147.

The issuance of a notice concerning revised §§ 170.13 and 170.5 do not imply that the Board will or will not make other changes in the proposal. The comments received regarding these sections were particularly susceptible to early reconsideration by the Board. The Board will give continuing consideration to all other comments received, either from the original notice, this supplemental notice, or the hearing.

Interested persons are invited to comment on this supplemental proposal by submitting such written data, views, or arguments as they may desire or by submitting views at the hearing announced herein. Written communications should identify the regulatory docket or notice number and be submitted in duplicate to the Secretary, Hazardous Materials Regulations Board, Department of Transportation, 400 Sixth Street SW., Washington, D.C. 20590.

Communications received before March 27, 1968, will be considered by the Board before taking final action. All comments will be available for examination by interested persons both before and after the closing date for comments. The proposal contained in this notice may be changed in the light of comments received.

This notice is issued under the authority of Title 18, U.S.C., sections 831-835, section 9 of the Department of Transportation Act (49 U.S.C. 1657), and title VI and section 902(h) of the Federal Aviation Act of 1958 (49 U.S.C. 1421-1430, and 1472(h)).

Issued: February 23, 1968.

C. P. MURPHY,
Rear Admiral, For the
Commandant, U.S. Coast Guard.

SAM SCHNEIDER,
Board Member,
Federal Aviation Administration.

J. R. ABERNATHY,
Acting Administrator,
Federal Highway Administration.

A. SCHEFFER LANG,
Administrator,
Federal Railroad Administration.

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8:40 a.m.]